



July 26, 2001

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2001-3245

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149932.

The City of El Paso Police Department (the “department”) received a request for copies of a mug photo and all arrest information for a specified former Assistant Chief of Police for the department. You state that the requestor verbally narrowed her request pursuant to section 552.222(b) of the Government Code to copies of a mug photo and the complaint affidavit associated with case number 01-123024. You state that you will provide the requestor with a copy of the complaint affidavit associated with case number 01-123024. You claim, however, that the submitted mug photo is excepted from disclosure pursuant to section 552.119 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Section 552.119 of the Government Code excepts from disclosure a photograph of a peace officer that, if released, would endanger the life or physical safety of the officer unless one of three exceptions applies.¹ The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. *See* Gov’t Code § 552.119(a). This section also provides that a

¹ The term “peace officer” is defined by article 2.12 of the Code of Criminal Procedure.

photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. *See* Open Records Decision No. 502 (1988). You state that the El Paso County District Attorney's Office has advised you that the former Assistant Chief of Police for the department is not presently under indictment or charged with an offense by information in connection with his arrest. You also state that the former Assistant Chief of Police is not a party in a police civil service hearing or a case in arbitration involving the City of El Paso. Finally, you state that you do not have the former Assistant Chief of Police's permission to release the mug photo. Therefore, it does not appear that any of the exceptions in section 552.119 are applicable. Accordingly, you must withhold the former Assistant Chief of Police's mug photo from disclosure pursuant to section 552.119 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

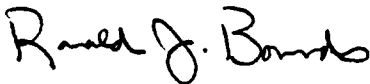
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald J. Bounds". The signature is fluid and cursive, with the first name "Ronald" and last name "Bounds" clearly distinguishable.

Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 149932

Enc. Submitted documents

c: Ms. Tracy Jones
KFOX
6004 North Mesa
El Paso, Texas 79912
(w/o enclosures)